

REMARKS

Claims 1-27 are pending in the application.

Claims 1-27 have been rejected.

Claims 17 and 25 have been amended to correct minor informalities.

Reconsideration of the Claims is respectfully requested.

1. Claim Objections

The Office Action had objected to claims 17 and 25 due to informalities. Claims 17 and 25 have been amended accordingly.

2. Claim Rejections under 35 U.S.C. § 103(a)

Claims 1-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Oliveira (US Pub 2002/0093943 A1) (hereinafter "Oliveira") in view of Miller et al (US Patent No. 5,272,002) (hereinafter "Miller"). Applicant respectfully traverses these rejections and requests that they be withdrawn.

To establish a *prima facie* case of obviousness, three basic criteria must be met. "First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP § 2142, p. 2100-128 (Rev. 2, May 2004).

Oliveira recites "a system and method of updating radio network data in Internet Protocol (IP) Base Stations." (Oliveira ¶ 00002). The radio network "data may be sent to update Digital Control Channel (DCCH) devices and Digital Traffic Channel (DTC) devices." In some instances, this data changes "the functionality of a device from a DTC device to a DCCH device

in the event of a DCCH failure.” (*see* Oliveira ¶ 00004). Oliveira was cited in the Office Action as providing “a wireless communication system comprises network configuration manager 11, MSC 12, and base stations 21.” Miller recites “multicast transmissions of files from a server to clients.” (Miller 1:11-12).

In asserting its rejection, the Office Action recites that it “would have been obvious to one having ordinary skill in the art at the time the invention was made to include the features of receiving negative acknowledgements for incorrectly received packets and resending the incorrectly received packets in Oliveira’s system, as suggested by Miller, to increase data transfer reliability.” (OA at p. 4; *see also* OA at p. 6). But there is no suggestion or motivation provided for the hypothetical combination of Oliveira in view of Miller to achieve Applicant’s claimed invention.

Instead, it is respectfully submitted that the rejection of Applicant’s invention is due to impermissible hindsight based upon Applicant’s disclosure. (MPEP § 2142, p. 2100-128 (Rev. 2, May 2004)). “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” (MPEP § 2142, p. 2100-128 (Rev. 2, May 2004)).

For example, Miller is relied upon for error reporting simply in that “Oliveira does not disclose receiving error reporting at the sender” (Office Action at p. 3). Also, that “Oliveira does not disclose that the sender transmitting an error status request to plurality of receivers” or that “Oliveira does not disclose that sender determining a subset of receivers that failed to correctly receive all of the plurality of data packets” (Office Action at pp. 5-6). Also, the Office Action noted that “Oliveira does not disclose that the sender and the plurality of receivers using FEC to overcome transmission errors. However, FEC is well known in the art.” (Office Action at pp. 4-5). But more notably, Oliveira omits any discussion of “error reporting.” Accordingly, the references cited do not expressly or impliedly provide any suggestion or

motivation to achieve the claimed invention nor has there been provided a convincing line of reasoning why the artisan would have found Applicant's claimed invention to have been obvious in light of Oliveira in view of Miller

The method of Applicant's claimed invention recites "In a cellular wireless communication system including a plurality of cellular wireless communication system network components intercoupled by a wired network, a method for distributing a file from a network component acting as a sender to a plurality of network components acting as receivers, the method comprising: . . . receiving error reporting at the sender from at least some of the plurality of receivers that failed to correctly receive all of the plurality of data packets identifying the plurality of data packets not correctly received; and the sender transmitting a plurality of previously incorrectly received data packets of the plurality of data packets to the at least some of the plurality of receivers." (Claim 1).

The system of Applicant's claimed invention recites, *inter alia*, a "system for distributing a file within a wireless communication network, the system comprising: . . . a plurality of software instructions executable by the sender network component and the plurality of receiver network components . . . a second set of receiver instructions that, when executed by the processor of a receiver network component that fails to correctly receive all of the plurality of data packets, causes the receiver network component to error report to the sender network component" (Claim 10). Also, the system of Claim 19 recites, *inter alia*, a "system for distributing a file within a wireless communication network, the system comprising: a server protocol suite . . . ; a plurality of receiver protocol suites . . . wherein the receiver protocol suite causes the plurality of receiver network components to error report to the sender network component."

It is respectfully submitted, that the radio data updating of Oliveira and the multicast transmissions of files from a server to clients of Miller, singularly or in combination, fail to provide a suggestion or motivation to modify the references to achieve Applicant's claimed invention recited in Independent Claims 1, 10, and 19. Thus, Claims 1, 10, and 19 are allowable

over these cited references. Claims 2-9, 11-18, and 20-27, which depend from amended claims 1, 10, and 19, respectively, are allowable for these same reasons.

3. Conclusion

As a result of the foregoing, the Applicant asserts that the Claims 1 through 27 are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at ksmith@texaspatents.com.

Respectfully submitted,

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